IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 2898 of 2007()
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CMP.9229/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL

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REVN. PETITIONER: COMPLAINANT
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PRAKASAN, VIJAYA NIVAS,
NEAR KURISSIODE TEMPLE,
KIZHUVILAM VILLAGE,
THIRUVANAMTHAPURAM DISTRICT.

BY ADV. SRI.M.R.RAJESH
SMT.A.K.PREETHA

RESPONDENTS: STATE
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STATE OF KERALA, REP.BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.C.M. NAZAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**"CR"**

**V. RAMKUMAR, J.**

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**Crl. R.P. NO. 2898 of 2007**

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**Dated: 26-11-2007**

**ORDER**

In this Revision filed under Sections 397 and 401 Cr.P.C. , the revision petitioner who is the complainant in C.M.P. No. 9229 of 2005, a private complaint filed before the J.F.C.M.-I, Attingal for offences punishable under Sections 143, 147, 447, 427 I.P.C. and Sections 3 and 5 of the Explosive Substances Act, 1908 read with Section 149 I.P.C. challenges Annexure C order passed by the Magistrate taking cognizance only of the offences under the Indian Penal Code.

2. I heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

3. Annexure A is the private complaint filed by the revision petitioner before the court below. Apart from the fact that it contains averments with regard to the offences under the Indian Penal code, it also contains specific allegations with regard to the offences under Sections 3 and 5 of the Explosive Substances Act, 1908 by stating that his house was attacked with country bombs etc. causing extensive damage to the building including cracks on the wall. The sworn statements of the complainant as well as his witnesses also contain specific reference to the exploding of country bombs resulting in damage to the building etc. But the impugned order reads as follows:-

> "Complainant present. Complaint is taken on file as C.C. 588 of 2007 under Sections 143, 147, 447 and 427 I.P.C. read with Sec. 149 I.P.C."

4. When a complaint is filed before a Magistrate competent to take cognizance of the offences mentioned in the complaint and if the Magistrate does not take cognizance of offences mentioned in the complaint in their entirety but takes cognizance only of some of the offences and does not give reasons for not taking cognizance with regard to the rest of the offences, then with regard to those offences for which no cognizance is taken, the complaint will have to be treated as dismissed attracting Sec. 203 Cr.P.C. which reads as follows:-

> "Dismissal of a complaint - If, after considering the statements on oath (if any) of the complainant and the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing".

5. It is true that the Magistrate has not stated in the impugned order that the complaint so far as it relates to the offences under the Explosive Substances Act, is dismissed. But the legal effect of not taking cognizance of those offences is

a dismissal of the complaint so far as those offences are concerned. The position will be the same if as against a number of persons arrayed as accused in a private complaint alleging the commission of certain cognizable offences, the Magistrate were to take cognizance of only some of those offences omitting the others or if the Magistrate were to take cognizance of all those offences against some of the accused persons alone omitting the others. In such a case, it will amount to a discharge with regard to the offences omitted to be taken cognizance of and with regard to the accused persons excluded from cognizance. If the legal consequence of such omission is a discharge, then the Magistrate is obliged to give reasons. If for dismissing a complaint, the Magistrate is bound to give reasons under Sec. 203, the Magistrate is **a fortiori** obliged to give reasons for the piecemeal dismissal of the complaint as well. A similar view was taken by a learned Single Judge of this Court in the order dated 29-10-2007 in **Dr. Mathew Abraham v. Gopalakrishnan & Anr.** in Crl. R.P. No. 3660 of 2007. In **Chandra Deo v. Prokash Chandra Bose - AIR 1963 S.C. 1430** the Apex Court observed as follows:--

> "Where the Magistrate has dismissed the complaint without giving reasons as required by S. 203 Cr.P.C. the error is of a kind which goes to the root of the matter. It is possible to say that giving of reasons is a pre-requisite for making an order of dismissal of a complaint under S. 203 Cr.P.C. and absence of the reasons would make the order a

> nullity. Even assuming, however, that the rule laid down in Willie (William) Slaney v. State of Madhya Pradesh - AIR 1956 SC 116 applies to such a case, prejudice is writ large on the face of the order. The complainant is entitled to know why his complaint has been dismissed with a view to consider an approach to a revisional Court. Being kept in ignorance of the reasons clearly prejudices his right to move the revisional Court and where he takes a matter to the revisional court, renders his task before that Court difficult, particularly, in view of the limited scope of the provisions of Ss. 438 and 439, Code of Criminal Procedure".

6. Thus, if the failure to give reasons which is a facet of the principles of natural justice, could even render the order a nullity in the context of a dismissal of a complaint in toto, the said principle would apply with equal force to a piecemeal or partial dismissal of a complaint. The failure by the Magistrate to give reasons for not taking cognizance of the offences under the Explosive Substances Act cannot, therefore, be supported. The impugned order is accordingly set aside and C.M.P. 9229 of 2005 will stand restored to the file of J.F.C.M. - II, Attingal who shall consider the said private complaint in accordance with law and pass appropriate orders thereon. Eventhough there is an embargo on the court under Sec. 7 of the Explosive Substances Act, 1908 with regard to the offences thereunder, the bar contained in the above provision is only against

proceeding to the trial and it does not preclude the court from taking cognizance of the offences if those offences are made out. The petitioner shall appear before the court below without any further notice on 21-12-2007.

This Crl. R.P. is disposed of as above.

V. Ramkumar, Judge.

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